



Reprinted
February 1, 2006

SENATE BILL No. 108

DIGEST OF SB 108 (Updated January 31, 2006 5:18 pm - DI 73)

Citations Affected: IC 22-2; IC 22-5; noncode.

Synopsis: Wage payment issues. Provides that an employer who fails to pay an employee must pay interest at a monthly rate of 1.5% of the amount due. (Current law makes the penalty 10% per day.) Provides that the maximum amount of interest that may be paid to an employee is the lesser of: (1) double the amount of wages due to the employee; or (2) \$50,000. Provides a procedure for an employer to deduct up to \$100 due to the employer from an employee from the employee's unpaid wages. Exempts employees who are classified as exempt under the federal Fair Labor Standards Act from the state provisions concerning wage payment. Provides that in the case of an employer who fails to pay wages to an employee whose average weekly wage is less than \$1,000, if the failure to pay the wages was not in good faith a court may order the employer to pay the employee not more than twice the amount of unpaid wages and reasonable attorney's fees. Provides that an employer shall pay an employee for all wages earned to a date not more than 10 business days before the date of the payment. (Current law refers to "10 days" rather than "10 business days".) Permits a wage assignment for: (1) payment for uniforms; (2) payment for hand-held tools and equipment; or (3) tuition repayment. Specifies that an employee may make a wage assignment for tuition repayment only if before beginning the education or the training program the employee and the employer execute a written instrument specifying the amount and conditions of the employee's payment or

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Effective: July 1, 2006.

Young R Michael

January 9, 2006, read first time and referred to Committee on Pensions and Labor.
January 26, 2006, reported favorably — Do Pass.
January 31, 2006, read second time, amended, ordered engrossed.

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repayment. Specifies limits and conditions on the amount of deductions that may be made from an employee's wages for certain wage assignments. Establishes a fee for issuing a replacement payroll check in certain circumstances. Provides that if an employee incurs certain fees or charges because a payroll payment is delayed or is denied for insufficient funds, the employer must reimburse the employee for the fees or charges. Specifies that an employer must issue a replacement payroll check to an employee who, not more than 15 days after the original payroll check is issued, submits a written request for the issuance of the replacement payroll check because of the theft, destruction, or other loss of the original payroll check. Repeals and relocates language making it a Class C infraction for an employer to sell merchandise or supplies to an employee for a price higher than to the public. Repeals a chapter concerning the regulation of wage payments, which includes the following provisions: (1) A provision requiring an employer to pay employees in commercial paper. (2) A duplicate provision concerning frequency of wage payments. (3) A provision containing obsolete language concerning liens of laborers.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 108

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-2-5-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Every person, firm,
3 corporation, limited liability company, or association, their trustees,
4 lessees, or receivers appointed by any court, doing business in Indiana,
5 shall pay each employee at least semimonthly or biweekly, if requested,
6 the amount due the employee. The payment shall be made in lawful
7 money of the United States, by negotiable check, draft, or money order,
8 or by electronic transfer to the financial institution designated by the
9 employee. Any contract in violation of this subsection is void.
10 (b) Payment shall be made for all wages earned to a date not more
11 than ten (10) **business** days prior to the date of payment. However, this
12 subsection does not prevent payments being made at shorter intervals
13 than specified in this subsection, nor repeal any law providing for
14 payments at shorter intervals. However, if an employee voluntarily
15 leaves employment, either permanently or temporarily, the employer
16 shall not be required to pay the employee an amount due the employee
17 until the next usual and regular day for payment of wages, as

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established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:

(1) ten (10) **business** days have elapsed after the employee has made a demand for the wages due the employee; or

(2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded.

SECTION 2. IC 22-2-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. **(a) Except as provided in subsection (b), every such person, firm, corporation, limited liability company, or association who shall fail fails to make payment of wages to any such an employee as provided in section 1 of this chapter shall as liquidated damages for such failure, pay to such the employee for each day that the amount due to him the employee remains unpaid ten percent (10%) of interest at the rate of one and one-half percent (1.5%) per month on the amount due to him the employee in addition thereto, not exceeding double the amount of wages due, and said damages to the wages due. However, the maximum amount of interest that may be paid to an employee under this subsection may not exceed the lesser of:**

(1) double the amount of wages due to the employee; or

(2) fifty thousand dollars (\$50,000).

(b) Upon termination of an employment relationship, the employer shall pay to the employee the unpaid wages minus any amount deducted as due to the employer from the employee. However, the amount deducted may not exceed one hundred dollars (\$100). Amounts may be deducted under this subsection only for a purpose described in IC 22-2-6-2(b).

(c) At the employee's request, an employer that deducts an amount under subsection (b) shall provide the employee with a written notice itemizing the amounts deducted. The employer shall provide the written notice required by this subsection not later than fourteen (14) days after the date of the employee's request.

(d) The wages, including any amount in disagreement under subsection (b), may be recovered in any court having jurisdiction of a suit to recover the amount due to such the employee, and in any suit so brought to recover said wages or the liquidated damages for nonpayment thereof; or both, the court shall tax and assess as costs in said case a The court shall award to the employee reasonable fee for the plaintiff's attorney or attorneys, attorney's fees incurred by the employee if the employee recovers any wages in a suit under this

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section.

(e) This section does not preclude the employer or employee from recovering other damages to which either is entitled.

(f) This subsection applies only to an employee whose average weekly wage from an employer is less than one thousand dollars (\$1,000) per week. If a court finds that an employer's failure to pay an employee's wages as set forth in section 1 of this chapter did not occur in good faith, the court may order the employer to pay:

(1) not more than two (2) times the amount of unpaid wages owed the employee; and

(2) reasonable attorney's fees.

SECTION 3. IC 22-2-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. **Employees who are classified as exempt under the federal Fair Labor Standards Act (29 U.S.C. 201 et seq.),** farmers, and those engaged in the business of agriculture and horticulture shall be specifically exempt from the provisions of this chapter.

SECTION 4. IC 22-2-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) Any assignment of the wages of an employee is valid only if all of the following conditions are satisfied:

(1) The assignment is:

(A) in writing;

(B) signed by the employee personally;

(C) by its terms revocable at any time by the employee upon written notice to the employer; and

(D) agreed to in writing by the employer.

(2) An executed copy of the assignment is delivered to the employer within ten (10) days after its execution.

(3) The assignment is made for a purpose described in subsection (b).

(b) A wage assignment under this section may be made for the purpose of paying any of the following:

(1) Premium on a policy of insurance obtained for the employee by the employer.

(2) Pledge or contribution of the employee to a charitable or nonprofit organization.

(3) Purchase price of bonds or securities, issued or guaranteed by the United States.

(4) Purchase price of shares of stock, or fractional interests therein, of the employing company, or of a company owning the majority of the issued and outstanding stock of the employing

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company, whether purchased from such company, in the open market or otherwise. However, if such shares are to be purchased on installments pursuant to a written purchase agreement, the employee has the right under the purchase agreement at any time before completing purchase of such shares to cancel said agreement and to have repaid promptly the amount of all installment payments which theretofore have been made.

(5) Dues to become owing by the employee to a labor organization of which the employee is a member.

(6) Purchase price of merchandise sold by the employer to the employee, at the written request of the employee.

(7) Amount of a loan made to the employee by the employer and evidenced by a written instrument executed by the employee subject to the amount limits set forth in section 4(c) of this chapter.

(8) Contributions, assessments, or dues of the employee to a hospital service or a surgical or medical expense plan or to an employees' association, trust, or plan existing for the purpose of paying pensions or other benefits to said employee or to others designated by the employee.

(9) Payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under any law of this state or of the United States.

(10) Payment to any person or organization regulated under the Uniform Consumer Credit Code (IC 24-4.5) for deposit or credit to the employee's account by electronic transfer or as otherwise designated by the employee.

(11) Premiums on policies of insurance and annuities purchased by the employee on the employee's life.

(12) The purchase price of shares or fractional interest in shares in one (1) or more mutual funds.

(13) A judgment owed by the employee if the payment:

(A) is made in accordance with an agreement between the employee and the creditor; and

(B) is not a garnishment under IC 34-25-3.

(14) Subject to subsection (d) and IC 22-5-6, payment for the purchase or maintenance of uniforms worn by the employee while performing duties for the employer.

(15) Subject to subsection (d) and IC 22-5-6, payment for the purchase or rental of hand-held tools and equipment used by the employee while performing duties for the employer.

(16) Payment or repayment of the employee's tuition for:

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1 (A) a postsecondary educational institution;

2 (B) an apprenticeship training program; or

3 (C) an educational training program;

4 approved by the employer. An employee may make a wage
5 assignment under this subdivision only if before beginning the
6 education or the training program the employee and the
7 employer execute a written instrument specifying the amount
8 and conditions of the employee's payment or repayment.

9 (c) The total amount of deductions from an employee's wages
10 under any combination of wage assignments under subsection
11 (b)(6), (b)(7), (b)(14), (b)(15), and (b)(16) for any work week may
12 not exceed the lesser of:

13 (1) twenty-five percent (25%) of the employee's disposable
14 earnings for that week; or

15 (2) the amount by which the employee's disposable earnings
16 for that week exceed thirty (30) times the federal minimum
17 hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the
18 time the wages are payable.

19 (d) An employee may make a wage assignment under subsection
20 (b)(14) or (b)(15) only if:

21 (1) the employer is not otherwise prohibited by contract or by
22 law from charging for the purchase or maintenance of the
23 uniforms or for the purchase or rental of the tools and
24 equipment;

25 (2) the employer has a schedule of charges for the purchase,
26 maintenance, or rental that is available to all of the
27 employer's employees;

28 (3) no additional charge or fee is imposed for making the wage
29 assignment;

30 (4) if the wage assignment is for the purchase of uniforms,
31 tools, or equipment:

32 (A) the employee makes a written request for the
33 purchase; and

34 (B) the employee and the employer execute a written
35 instrument specifying the terms and conditions of the
36 purchase; and

37 (5) the wage assignment is voluntary and is made for a
38 specific time.

39 SECTION 5. IC 22-2-8-1 IS AMENDED TO READ AS FOLLOWS
40 [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) An employer who deducts
41 the fee described in section 4 of this chapter does not violate this
42 section.

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(b) It is unlawful for any employer to assess a fine on any pretext against any employee and retain the same or any part thereof from ~~his~~ **the employee's** wages.

(c) An employer who violates this section commits a Class C infraction.

SECTION 6. IC 22-2-8-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4. (a) Notwithstanding section 1 of this chapter, an employer may deduct from an employee's wages a fee computed under subsection (b) to issue a replacement payroll check at the written request of the employee because of theft, destruction, or other loss of the original payroll check after receipt by the employee.**

(b) The fee described in subsection (a) is equal to:

(1) the amount charged the employer by a financial institution to stop payment on the original payroll check; plus

(2) the lesser of:

(A) the employer's reasonable costs incurred to reissue the payroll check; or

(B) twenty dollars (\$20).

(c) If an employee incurs:

(1) a fee for:

(A) a stop payment;

(B) insufficient funds in an account; or

(C) other reasons;

imposed by a financial institution;

(2) a late payment charge imposed by a creditor; or

(3) both of the items described in subdivision (1) and (2);

as a result of an employer's payroll payment being delayed or denied for insufficient funds upon initial submission, deposit, or transfer of the payment to a financial institution or a check cashing service, the employer shall reimburse the employee for the fee or charge, or both not later than seven (7) days after the employee presents proof of the fees or charge, or both to the employer.

(d) An employer must issue a replacement payroll check to an employee who, not more than fifteen (15) days after the original payroll check is issued, submits a written request for the issuance of the replacement payroll check because of the theft, destruction, or other loss of the original payroll check. The issuance of a replacement payroll check under this subsection is subject to the payment of a fee computed under subsection (b).

SECTION 7. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS

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1 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2006]:
3 **Chapter 6. Employer Sales to Employees**
4 **Sec. 1. An employer may not sell to an employee of the employer**
5 **any:**
6 **(1) merchandise; or**
7 **(2) supplies;**
8 **at a price higher than the employer sells the merchandise or**
9 **supplies for cash to another person who is not an employee of the**
10 **employer.**
11 **Sec. 2. A person who violates section 1 of this chapter commits**
12 **a Class C infraction.**
13 SECTION 8. IC 22-2-4 IS REPEALED [EFFECTIVE JULY 1,
14 2006].
15 SECTION 9. [EFFECTIVE JULY 1, 2006] IC 22-2-8-4, as added
16 by this act, applies to wages first payable after June 30, 2006.

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 108, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 108 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 7, Nays 3.

SENATE MOTION

Madam President: I move that Senate Bill 108 be amended to read as follows:

Page 4, between lines 30 and 31, begin a new paragraph and insert:

"(c) If an employee incurs:

(1) a fee for:

(A) a stop payment;

(B) insufficient funds in an account; or

(C) other reasons;

imposed by a financial institution;

(2) a late payment charge imposed by a creditor; or

(3) both of the items described in subdivision (1) and (2); as a result of an employer's payroll payment being delayed or denied for insufficient funds upon initial submission, deposit, or transfer of the payment to a financial institution or a check cashing service, the employer shall reimburse the employee for the fee or charge, or both not later than seven (7) days after the employee presents proof of the fees or charge, or both to the employer."

(Reference is to SB 108 as printed January 27, 2006.)

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senate Bill 108 be amended to read as follows:

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Page 2, between lines 13 and 14, begin a new paragraph and insert:

"(f) This subsection applies only to an employee whose average weekly wage from an employer is less than one thousand dollars (\$1,000) per week. If a court finds that an employer's failure to pay an employee's wages as set forth in section 1 of this chapter did not occur in good faith, the court may order the employer to pay:

- (1) not more than two (2) times the amount of unpaid wages owed the employee; and**
- (2) reasonable attorney's fees."**

(Reference is to SB 108 as printed January 27, 2006.)

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senate Bill 108 be amended to read as follows:

Page 3, line 41, before "tools" insert "**hand-held**".

(Reference is to SB 108 as printed January 27, 2006.)

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senate Bill 108 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 22-2-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers appointed by any court, doing business in Indiana, shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee. The payment shall be made in lawful money of the United States, by negotiable check, draft, or money order, or by electronic transfer to the financial institution designated by the employee. Any contract in violation of this subsection is void.

(b) Payment shall be made for all wages earned to a date not more

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than ten (10) **business** days prior to the date of payment. However, this subsection does not prevent payments being made at shorter intervals than specified in this subsection, nor repeal any law providing for payments at shorter intervals. However, if an employee voluntarily leaves employment, either permanently or temporarily, the employer shall not be required to pay the employee an amount due the employee until the next usual and regular day for payment of wages, as established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:

- (1) ten (10) **business** days have elapsed after the employee has made a demand for the wages due the employee; or
- (2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded."

Renumber all SECTIONS consecutively.

(Reference is to SB 108 as printed January 27, 2006.)

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senate Bill 108 be amended to read as follows:

Page 1, line 11, after "due." insert "**However, the maximum amount of interest that may be paid to an employee under this subsection may not exceed the lesser of:**

- (1) **double the amount of wages due to the employee; or**
- (2) **fifty thousand dollars (\$50,000)."**

Page 1, line 15, delete "two" and insert "**one**".

Page 1, line 16, delete "(\$200)."

and insert "**(\$100). Amounts may be deducted under this subsection only for a purpose described in IC 22-2-6-2(b).**".

Page 2, line 7, after "employee" delete "," and insert ".".

Page 2, line 10, delete "along with" and insert "**The court shall award to the employee**".

Page 2, line 11, after "employee" delete "." and insert "**if the employee recovers any wages in a suit under this section.**".

Page 3, line 38, delete "Payment" and insert "**Subject to subsection (d) and IC 22-5-6, payment**".



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Page 3, line 41, delete "Payment" and insert **"Subject to subsection (d) and IC 22-5-6, payment"**.

Page 4, line 6, after "employer." insert **"An employee may make a wage assignment under this subdivision only if before beginning the education or the training program the employee and the employer execute a written instrument specifying the amount and conditions of the employee's payment or repayment."**

(c) The total amount of deductions from an employee's wages under any combination of wage assignments under subsection (b)(6), (b)(7), (b)(14), (b)(15), and (b)(16) for any work week may not exceed the lesser of:

- (1) twenty-five percent (25%) of the employee's disposable earnings for that week; or
- (2) the amount by which the employee's disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time the wages are payable.

(d) An employee may make a wage assignment under subsection (b)(14) or (b)(15) only if:

- (1) the employer is not otherwise prohibited by contract or by law from charging for the purchase or maintenance of the uniforms or for the purchase or rental of the tools and equipment;
- (2) the employer has a schedule of charges for the purchase, maintenance, or rental that is available to all of the employer's employees;
- (3) no additional charge or fee is imposed for making the wage assignment;
- (4) if the wage assignment is for the purchase of uniforms, tools, or equipment:
 - (A) the employee makes a written request for the purchase; and
 - (B) the employee and the employer execute a written instrument specifying the terms and conditions of the purchase; and
- (5) the wage assignment is voluntary and is made for a specific time."

Page 4, between lines 30 and 31, begin a new paragraph and insert:

"(c) An employer must issue a replacement payroll check to an employee who, not more than fifteen (15) days after the original payroll check is issued, submits a written request for the issuance of the replacement payroll check because of the theft, destruction,

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or other loss of the original payroll check. The issuance of a replacement payroll check under this subsection is subject to the payment of a fee computed under subsection (b)."

(Reference is to SB 108 as printed January 27, 2006.)

YOUNG R MICHAEL

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